

# Delaware Department of Agriculture

## **I. Department Description/Summary of Livable Delaware Responsibilities**

DDA personnel are responsible for implementation of many “Livable Delaware” efforts. This department is responsible for the acquisition and management of all state forestlands. We also assist private landowners and local governments with the management of their forestlands. DDA personnel administer and staff the state’s Agricultural Lands Preservation Program, which is the only program in Delaware preserving active farmland. This department works to ensure the continued economic and environmental viability of agriculture in the First State. We work to further the economic growth of agriculture and thus our overall state economy. DDA strives to identify and spark new markets for the state’s agricultural products. Of particular focus in the near future, will be the Biofuels Program. DDA constantly strives to further agricultural, health, environmental, economic, food safety, and land use education in Delaware through all our programs.

## **II. List of Program Activities that Relate to Livable Delaware**

Current Responsibilities:

1. Farmland Preservation (PDR and TDR)
2. Forest Management (Urban and Rural)
3. Biofuels Program

## **III. Detailed Descriptions of Program Activities (from list)**

1. Farmland Preservation – We strive to preserve a sufficient amount of Delaware’s prime farmland to ensure the support for the agricultural industry, provide extensive open space, control growth, and protect critical habitat and natural resources. The program attempts to reach this goal through ten-year farm preservation agreements and permanent preservation of farmland through state purchase of agricultural easements on privately owned farmland. There are currently 127,825 acres in 501 Agricultural Preservation Districts enrolled in the program. Of that total, 273 farms, encompassing 60,619 acres are permanently preserved through purchase of agricultural preservation easements.

Our goal is to permanently preserve approximately 10,000 acres/year of Delaware prime farmland. We effectively expend Bond Bill provided funds through targeting of areas in the state most threatened by

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development accounting for both growth management and long-term agricultural suitability. We prudently expend funds through a competitive landowner offered discount bid process, which keeps the easement purchase price low. This program directly implements the “Livable Delaware” goal of preserving farmland. In addition, by targeting lands for preservation located adjacent to existing communities these preserved lands form “growth boundaries” around existing communities.

2. State Forest Management - The Delaware Forest Service strives to conserve, protect and enhance the forest and its resources for the public through education, management, demonstration, promotion and provision of technical services. **Both rural and urban forests are included in a comprehensive approach to forest advocacy, management and protection.**

Specifically, Delaware’s Forest Service is working to increase the amount of privately owned forest lands with professionally prepared forest management plans, provide technical forestry assistance (tree planting, tree care, urban forest grants, tree inventory, etc.) to Delaware communities, provide wildfire prevention programs to first graders and assistance to local fire companies, implement a state-wide forest health monitoring system to detect potential threats to forest health, increase the general population forest literacy level, increase the amount of state-owned forest lands and prudently and properly manage those lands for optimal forest health.

The Delaware Forest Service is “protecting critical natural resource areas,” and currently includes 15,500 acres in State Forest Lands. The Forest Service is working with the Open Space Council to acquire additional State Forest Lands.

## **IV. Legislative, Administrative and Budgetary Implications**

All of the proposed program changes outlined within this document have some statutory, administrative or budgetary implications. Recognizing the varying degrees of applicability to growth management and limited administrative and budgetary resources available, contained here are requirements for implementation of the actions previously outlined. In some cases, actual costs are as yet unknown and estimates are used. Further refinements of these estimates and costs will be made in the coming months.

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### **V. Identify how Capital And Budget Planning will be Used to Implement the State Investment Strategies**

Of paramount importance to the Department is a dedicated funding source of \$20 million per year for the Agricultural Lands Preservation Program's purchase of development rights efforts, and a fully funded operating budget to administer the program. This program cannot operate efficiently with continuation of the current problems associated with having legislatively approved operating funds held hostage by the State Budget Office.

Delaware's Forest Service would like to increase the budget for grants available to communities for tree planting and tree maintenance projects on publicly owned land from \$33,000, to \$55,000. The Forest Service would also like to increase the amount of State Forest Lands. Currently, the Delaware Forest Service receives land purchase funds through the Open Space council. Perhaps, in light of the Forest Service's unique needs and goals as compared to DNREC's land purchase needs and goals, a different land purchase funding source and mechanism may be appropriate.

### **VI. Summarize Intra- and Inter-Governmental Implications**

- 1 Farmland Preservation – Staff participate in the local, state and federal land use planning processes to effect decision favorable to the agricultural community. Land use plans, land related funding proposals, land related regulations and statutes are reviewed and commented upon by DDA staff. In addition, both the County Agricultural Advisory Board and the County Planning and Zoning Commissions review preservation districts for approval.
- 2 State Forest Management - Delaware Forest Service staff work closely with local, federal and state land use and land management personnel to ensure the continued viable health and profitability of Delaware forests. Urban Forestry Grants are awarded to community areas for planning, landscape design and planting projects.
- 3 Biofuels Program – The Biofuels program is overseen by the newly formed Alternative Fuels Working Group, which is a multi-disciplined, multi-jurisdictional committee comprised of representatives from Del-Esasi, DDA, DEDO, DelDOT, DNREC, and the agricultural community.

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### **VII. Summarize *e-Government Applications* (if any)**

All sections within the Department of Agriculture are in the process of implementing e-government initiatives. We hope to serve all registrations, applications and pertinent information to the general public, and other interested parties via the Internet.

Currently, many programs within DDA (Aglands Preservation, Urban Forestry, and Pesticide Groundwater Monitoring) are serving geographic and database information to the general public via the Internet. DDA's Internet-GIS provides over 100 geographically referenced data layers and tubular data to the public. Near future plans for improved information provision include adding Nutrient Management pertinent data, better parcel data, more Agricultural Lands Preservation data and more forest related data. In addition, the Aglands Preservation Foundation will move its database management functions to the Internet for staff use only. This move will enhance data access ease and speed, allowing us to better serve our customers.

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### Livable Delaware Activity – Detailed Program Description

Activity/Policy/Program: **Delaware Forest Service**

Contact person: Austin Short, Forestry Administrator

Enabling Laws: Title 3, Chapter 10

Policies: N/A

History: The DFS was formed in 1927 and its programs have evolved over that period to address the various needs of Delawareans and our forests. The Delaware code specific to the DFS (Title 3, Chapter 10) was updated in 1999 to more accurately reflect the current programs.

Current Situation: The Delaware Forest Service's (DFS) responsibilities are divided into three program areas—Conservation, Protection, and Education. Through the Forest Conservation program, the DFS provides free assistance, and in some cases financial assistance, to Delaware landowners and communities to help manage and improve rural and urban forests. The Protection program includes wildfire suppression assistance to volunteer fire companies, annual statewide monitoring of forest health, insect and disease identification, and inspection of forest management (primarily timber harvest) activities to ensure compliance with existing state laws. The Education component includes management of Delaware's 15,000+ acres of State Forests and various educational programs and activities. Through these three programs the DFS meets the following Livable Delaware goals:

- **Direct investment and future development to existing communities, urban concentrations and growth areas.** Through the Forest Conservation Program, the DFS provides approximately \$36,000 of competitive, matching grants each year to communities to improve urban forests on their publicly owned lands.
- ***Protect important farmlands and critical natural resource areas.*** Delaware's State Forests include many critical natural resource areas, including the states' largest concentration of Delmarva Bays, which are found in Blackbird State Forest. Furthermore, the DFS helps landowners manage their forests, and thus maintain the productivity of Delaware's farmlands, through technical assistance from professional foresters.
- ***Encourage redevelopment and improve the livability of existing communities and urban areas.*** Again, the Urban and Community Forestry component of the Forest Conservation Program provides both grants and technical assistance to communities to help maintain and improve the forest resources in, and thus the livability of, our cities and towns.

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- ***Improve access to educational opportunities, health care and human services for Delawareans.*** Through the Education Program, the DFS provides numerous educational programs to children and adults throughout Delaware to increase their awareness and knowledge of forests and forest management. Furthermore, a function of the State Forests is to demonstrate proper forest management to the public. Lastly, the DFS opened a forest educational facility at Redden State Forest in 2000 and plans to open a similar facility at Blackbird State Forest in 2003.

Revisions/Actions Needed: The DFS believes no major revisions are needed to these programs. As with any program, minor revisions are needed occasionally, but no legislative or regulatory changes are planned in the near future.

Resources needed to create/revise: N/A

Process for creation/revision: N/A

Schedule: N/A

Measures to guide progress: N/A

Interactions or inter-relationships with other agencies or units of government: The DFS works closely with the USDA Forest Service to provide these programs. Specifically, the U.S. Forest Service, State and Private Forestry Program (S&PF) provides approximately 27% of the DFS budget, including the funds for 4.5 positions and the community forestry grants previously mentioned. Obviously, a reduction of the S&PF budget could significantly impact the ability of the DFS to provide the programs described. The DFS also works with the USDA Natural Resources Conservation Service (NRCS) since NRCS administers the Forestry Incentives Program (FIP). FIP provides cost shares to landowners for forestry activities, such as tree planting and timber stand improvement. The DFS also works with NRCS and DNREC to deliver the Conservation Reserve Enhancement Program (CREP). This program provides cost shares and annual rental payments to landowners to convert their cropland into grasses or trees. The DFS assists with the tree-planting portion of this program. At this time, no significant law changes are needed for any of these programs.

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### Livable Delaware Activity – Detailed Program Description

Activity/Policy/Program name

## **Agricultural Bio-Fuels Program**

Contact person:

DR. PAUL SAMPLE, CHAIR  
ALTERNATIVE FUELS WORKING GROUP  
MELANIE RAPP, MARKETING SPECIALIST  
DELAWARE DEPARTMENT OF AGRICULTURE

Enabling Laws:

CLEAN AIR ACT, ENERGY POLICY ACT

Policies:

At this time, there are no state government policies that affect this activity.

History:

Delaware farmers have identified the use of soydiesel as an opportunity for industry growth for their commodity. They believe that if soydiesel is mandated or legislated in our state, a soydiesel processing facility could be built in the region. The overall objective of providing additional outlets and marketing opportunities for soybeans will hopefully result in the farmer receiving higher prices for his commodity, resulting in economic growth in the agricultural sector.

A program to promote the use of biodiesel made from soybeans was initially developed by the Delaware Soybean Board in 1999. The Board provided state government fleets with \$10,000.00 in funds to off-set the incremental cost when soydiesel is used to replace petroleum diesel in state fleet diesel vehicles. The Delaware Department of Transportation completed a successful pilot study of the fuel and has continued to use soydiesel in many of their diesel vehicles. On April 5, 2001 House Bill No. 162 was introduced that would eliminate the state motor fuel tax on biodiesel. The bill was sponsored by Representatives Carey and Caulk and co-sponsored by 28 state representatives and 13 senators. Due to the anticipated lost revenues to the state, the Bill continues to reside in the House Transportation Committee.

The DDA has developed and facilitated programs that increase the knowledge, awareness, and support for soybean-based biodiesel fuels. The DDA has created and distributed various communications vehicles, including brochures, fliers, print advertisements, and television commercials to educate the general public about the health and environmental benefits of biodiesel. The DDA staff has provided marketing and administrative support for the Delaware Soybean Board and their initiatives to encourage the use of soydiesel as an alternative fuel option for state government fleets to meet the requirements of the Energy Policy Act.

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Current Situation: The newly-created Alternative Fuels Working Group, comprised of representatives from Del-Easi, DDA, DEDO, DelDOT, DNREC, and the agricultural community, was formed to develop a strategic plan for the development and implementation of a cooperative business structure that could produce and market soydiesel. The Working Group will also investigate other business opportunities for agricultural-based fuels, including ethanol, their economic benefits to Delaware farmers and agribusinesses, and their environmental and health benefits to our state.

Revisions/Actions Needed: No revisions or actions are needed at this time.

Resources needed to create/revise: None at this time.

Process for creation/revision: To be determined.

Schedule: Currently under development by the Alternative Fuels Working Group

Measures to guide progress: Currently under development by the Alternative Fuels Working Group

Interactions or inter-relationships with other agencies or units of government: In addition to the DDA, several state agencies have contributed to the biofuels project, including DelDot, DNREC, DEDO, and the Dept. of Administrative Services.



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### **Livable Delaware Activity – Detailed Program Description**

Activity/Policy/Program name:                    **Agricultural Lands  
Preservation Program**

Contact person:                                    R. Stewart McKenzie, Planner IV

Enabling Laws:                                    TITLE 3 DELAWARE STATE CODE, Chapter 9,  
“Delaware Agricultural Lands Preservation Act” – This Chapter provides for the creation  
of agricultural preservation districts and the purchase of permanent preservation  
easements.

Policies:                    The Delaware Agricultural Lands Preservation Foundation (administering  
body) adopted a set of Policies, Procedures and Bylaws designed to fully implement the  
provisions of the enabling legislation.

History:                    Thirty-nine percent of the agricultural land in Delaware disappeared in the  
last 80 years due to development and population expansion. Agriculture has historically  
been a leading contributor to Delaware’s economy. Current land use patterns combined  
with declining commodity values and lack of profitability pose a great threat to the  
industry. The Delaware Agricultural Lands Preservation Program was enacted in 1991  
to preserve viable agricultural lands and encourage development in areas where facilities  
and services can accommodate the population expansion.

Current Situation:                    The Program includes the following activities:

1.            Creation of Agricultural Preservation Districts. Lands throughout the state that  
meet certain criteria are protected for a minimum of ten years where no major  
subdivision or rezoning can take place. Currently there are 128,000 acres of  
farmland enrolled in the program (68,000 in agricultural preservation districts).
2.            Lands in Agricultural Preservation Districts are protected in perpetuity through  
the sale of development rights. Out of the 128,000 acres of farmland enrolled in  
the program, over 60,000 acres are permanently preserved.

Shaping Delaware’s Future Goals supported by this activity include:

1.            **“Protecting important farmlands and critical natural resource areas.”**
2.            **“Direct investment and future development to existing communities, urban  
concentrations, and growth areas.”**

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Revisions/Actions Needed: While the act of buying easements and establishing agricultural preservation districts is consistent with the goals and objectives of Livable Delaware, a look at the current priority/selection system for easement purchases may be warranted. This would be to ensure that the current priority system mandated by the General Assembly through statutory amendment of the Delaware Agricultural Lands Preservation Act does not conflict with state investment strategies.

Resources needed to create/revise: If any changes or modifications to the Foundation's priority/selection system were to occur, a public hearing would have to occur. In the past, staff has made presentations and held meetings in all three counties prior to the public hearing. Without knowing the depth of any proposed modifications, a general estimate would be two to four months to actually propose and approve any changes.

Process for creation/revision: see above.

Schedule: This is difficult to estimate. A statutory amendment would have to occur prior to any changes.

Measures to guide progress: N/A

Interactions or inter-relationships with other agencies or units of government: There are no Federal laws that directly impact the administration of the program. We have had success in working with Federal agencies (NRCS and FHWA) to secure additional funds for farmland preservation.

Local land use activities have conflicted with the administration of the program. The annexation of prime farmland by certain local governments has made protection of important farmlands virtually impossible in particular regions where development pressure is already severe. A formal approval process that extends beyond that of the local jurisdiction would be necessary to avoid future conflicts with State Investment Strategies. This would also hold true for local infrastructure expansion projects that define the areas where lands can no longer be protected, yet will require state investments for future services.

Finally, zoning ordinances that allow significant residential development to occur in rural areas tend to undermine the efforts where significant state resources have been used to for land protection.

***See following pages for additional details on purchase of development rights and transfer of development rights programs.***

## **Livable Delaware Implementation Strategy**

### **Delaware Agricultural Lands Preservation Program**

#### **Purchase of Development Rights and Transfer of Development Rights Agricultural Land Protection**

##### **Preface**

As residents of the only state in the nation that ranks in the top ten in both percent of land in cropland and percent of land in urban uses, First State farmers are subjected to tremendous land development pressure. Yet, the year 2000 statewide gross farm income was over \$860 million. Our farmers are a resilient lot, but they need our assistance for future success. As we all know, agriculture is a land dependent industry and that to protect the continued viability of that industry, important agricultural lands must be identified and preserved.

To date, the most effective agricultural land protection strategy utilized in Delaware has been the state's purchase of development rights program (PDR). In order to adjust to socially and politically dynamic wills, the program has been modified since its original implementation and will be modified in the future. The first part of this narrative, "I. A Review of the Priority/Selection System for the Purchase of Development Rights," details the need for additional changes to the PDR program as currently administered.

However, on its own and at current funding levels, the PDR program cannot protect a sufficient amount of agricultural land to protect the viability of the industry. Although it can be argued, that at appropriate funding levels and in the framework of responsible county comprehensive planning and zoning strategies, the PDR program could fulfill the mission. The second half of this narrative, "II. Transfer of Development Rights Issues for Delaware," addresses some of the issues to be considered in crafting a TDR program for the First State.

## **I. A Review of the Priority/Selection System for the Purchase of Development Rights**

### **Background**

When the Delaware Agricultural Lands Preservation Act was adopted, it was the intention of the State to "conserve, protect and encourage improvement of agricultural lands within the State for the production of food and other agricultural products.... to encourage, promote and protect farming as a valued occupation... maintaining agriculture as a viable industry and important contributor to Delaware's economy..."

It is widely known that agriculture is a noisy, dusty, smelly, and labor-intensive industry. However, current land use regulations do not treat agriculture as such. While industrial uses are generally separated from incompatible uses such as residential development, agriculture gets the opposite treatment. Areas where agriculture is the predominant land use also allow for a significant mix of residential development. Unfortunately, residential development is incompatible with agricultural uses and combined with declining commodity prices, is the biggest threat to the long-term viability of Delaware agriculture.

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### **Preservation Strategy**

For the Foundation, the key to preserving the agriculture industry is: To maintain a critical mass of viable and productive farmland with limited encroachment of non-farm development. The program is meant to preserve farmland and help curb sprawl, in that order.

Professionals in this field agree that it is important to consider the local land use climate when creating a strategy for buying easements. If strong agricultural zoning is in place to complement a PDR program, then buying easements where land is most threatened and likely to be developed is a sensible use of dollars.

In Delaware, all lands are under some type of pressure for development/conversion because the zoning ordinances permit large residential subdivisions in rural areas. When this type of scenario exists, then the preservation of lands under moderate development pressure makes the most sense. Unfortunately, some members of the General Assembly do not see it this way. Three years ago, the Foundation was charged with changing the program priorities. The very last sentence of 3 Del. C. §901, Purpose, policy and intent now reads, “It shall be a priority to create agricultural preservation districts and purchase development rights in those areas located near and adjacent to designated growth zones.”

This strategy suggests going right up to urban boundaries and buying easements in an effort to contain sprawl. Lancaster County has probably enjoyed the most success with this approach. The reason they can dictate urban expansion is because **effective** agricultural zoning exists on the other side of the preserved farm.

In Delaware, this strategy would be problematic for several reasons:

- 1) These properties are the most expensive to preserve – and there is no money budgeted for the program in the near future. A stable source of revenue (long-term funding source) is necessary to even attract the properties next to urbanizing areas.
- 2) Protecting every farm on the edge of every town in Delaware alone would not solve the problem of sprawl. It does not reduce the number of homes legally permitted in the countryside. Leapfrogging can still occur with septic permits being issued for subdivisions beyond the “growth boundary.”
- 3) Targeting farmland preservation near developing areas places the program in direct competition with developers. To date, the Foundation has already received criticism from the Town of Smyrna, upset because land ideal for future expansion was protected. Also, the Foundation is currently being sued for over \$4M dollars for an agricultural preservation district established next to the corporate limits of Dover.

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The FY1999 Bond Bill language required a shift in priorities that caused quite a stir throughout the farming community. Many landowners who had not been selected to sell their development rights to the Foundation saw the rule change as an opportunity to get out of the program altogether. For this to happen would undermine the very essence of the Agricultural Preservation District component of the program. An agricultural preservation district commits land to agricultural use for at least ten years and is a real bargain for the state considering the limited benefits offered to landowners at this stage.

In an effort to appease disenfranchised landowners and with the consent of legislative leadership, the Foundation made it a point to appraise all farms applying to sell an easement, thus giving every landowner in the program consideration for permanent preservation. While 75% of available funding has to be spent in the high priority zones, as mandated by the General Assembly and the Cabinet Committee on State Planning Issues, the results have been mixed.

First, the Foundation abandoned a preservation priority system that was looked upon as a national model. Farms that did not score high enough under the previous ranking system became immediate candidates for permanent preservation under the new system. Second, more landowners were bidding against each other, driving the level of discount to appraised values on easements higher than anyone could ever imagine. This made selling an easement less attractive to farms under high development pressure because the owner would give up huge values.

### **Selection priorities**

The Foundation has a ranking system in place, but does not use it because all farms are considered for easement purchase. The farm ranking is based on a 100-point scoring system as follows:

#### **Strategy Map – 50 points**

**LESA Score – 20 points**

**Farm Operation – 15 points**

#### **Other Factors – 15 points**

(For more detail, consult the Foundation's Policies, Procedures, and Bylaws)

DDA staff are currently reviewing the land use factors that are considered in each of these areas. We have found that there are several areas that have overlapped and may be consolidated into a simplified ranking system. It is important to note that the LESA system drives a majority of the ranking process in that a minimum LESA score must be met in order to enter the program. LESA was designed to rate a farm parcel's long-term suitability to remain in agricultural production. The system has been used in Delaware for 15 years to review land use proposals that convert farmland. This same system has been used in the past to determine which farms should be protected.

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One problem with this current system is that it penalizes lands that have more development pressure. An example would be a Site Assessment factor utilized in Kent and Sussex counties:

*Distance to urban census tract.* Farms that are closest to the most populated census tracts receive lower scores than those farthest away. This makes sense if you trying to justify why a development should not occur on the farm in the remote area. The scoring is counter-productive if you are trying to increase the chances of preservation for a farm closer to development.

The biggest challenge will be to create a system for preservation that prioritizes farmland that is most productive, helps achieve a critical mass of protected land, and is under some development pressure. A parcel's "likelihood of conversion" definitely needs to be given much consideration. Road frontage ratios, septic suitability, proximity to sewer, highways, and urban areas all need extra attention in order to determine level of development pressure. The State should already have a mapping layer depicting areas where there are significant development constraints. This is something that may be factored into the Foundation's scoring criteria, but generally should be handled in the appraisal process.

The argument that landowners can, have, and will use, is that even in the most environmentally sensitive areas, through variances or other means, lands still get converted. This is readily apparent in the millions of dollars invested to protect the coastal region of the state. Many would argue that these same lands "can't be developed." However, Foundation appraisals and those of other State agencies seem to prove otherwise.

Returning to a ranking system reduces the number of appraisals and landowners making an offer. Decreasing the number farms competing for the money will reduce some of the anxiety of discounting that many landowners have realized. But it can also send a message to landowners in certain areas that there is no chance of them selling an easement. Hence, the main incentive to enter the program is gone. Consistent long-term funding is ultimately the key to achieving success in the land protection arena.

### ***An increase in permanent funding allows for three things to happen:***

- 1) Decreases the level of discounts to appraised values;**
- 2) Increases the amount of district participation statewide; and**
- 3) Increases the chances of protecting farms under high and moderate development pressure.**

## **Livable Delaware Implementation Strategy**

### **II. Transfer of Development Rights Issues for Delaware**

Although Delaware has unique and specific needs and problems, there are common issues to consider when developing a TDR program. According to the American Farmland Trust, those issues are as follows:

- Which agricultural areas should be protected?
- What type of transfers should be permitted?
- How should development rights be allocated?
- Where should development be transferred, and at what densities?
- Should the zoning in the sending area be changed to create more of an incentive for landowners to sell development rights?
- Should the zoning in the receiving area be changed to create more of an incentive for developers to buy development rights?
- Should the government buy and sell development rights through a TDR bank?

Governor Miner's staff and advisory group on TDR will need to consider all these issues in light of Delaware's current land use management needs, goals and obstacles. The Department of Agriculture staff contributes the following information and some recommendations to consider when developing a workable TDR program for Delaware.

A local agricultural community is only viable in the context of a larger, profitable regional agricultural community and when the local community is not fragmented. Our local agricultural community does function within the framework of a larger profitable and more effectively protected regional community. Our neighbors have successfully enhanced and protected their agricultural economy by preserving large blocks of agricultural land. How they have succeeded in this effort is an important consideration in development of a TDR program for Delaware.

#### **Designate Sending and Receiving Areas**

It is generally considered prudent to identify and designate distinct sending and receiving areas when using a TDR program to protect and enhance the agricultural industry by preserving large amounts of agricultural land. Remembering that the goal of our farmland preservation program is to preserve large blocks of important agricultural lands, the first step in reaching that goal is to identify and target those important lands through designating them as TDR sending areas. TDR programs, which fail to take this step, do not preserve sufficient amounts of agricultural land to enhance the viability of the local industry. In addition, TDR programs operated in the absence of designated and distinct sending and receiving areas further exasperate the problem of agricultural fragmentation and degrade the future viability of the agricultural community in which they operate.

The state must work with the counties through the comprehensive planning process to designate these sending and receiving areas. DDA proposes that the state's already identified community areas are the starting place for a discussion about receiving area

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designation. DDA further proposes that a combination of factors, such as soil type, land use patterns, current farmland preservation activity and use of the state's Farmland Preservation Strategy Map, are relevant factors to consider in designation of sending areas. For example, in Kent County, the southwest corner and the northeast corner of the county encompass areas representing the highest level of participation in the state's PDR program and thus already lend themselves to sending area designation. Such a strategy would further enhance both the agricultural viability of these communities and agricultural property value. However, in New Castle County, the use of our "Strategy Map's Suitability Class I and II" designations might be a more effective tool for identification of sending areas.

### **Transfer Value**

It is no secret that a goal of Delaware's farmland preservation program, as this and previous administrations have viewed it, is curtailing residential sprawl. With that in mind, DDA supports the use of graduated transfer values as related to urban population center proximity. Development rights to farms located close to urban centers would be worth more than those of farms located further away from the population centers. This is supported in the appraisal process.

### **Agricultural Protective Zoning**

The counties feign a lack of authority to implement agricultural protective zoning. Although it is true that, by state constitution, the counties lack authority to implement an "agricultural zoning designation," they do not lack the authority to implement large lot zoning that is agriculturally protective. We have advocated the use of a "rural character zone" or "conservation zone" of *1du/50 ac* to protect our agricultural resource and enhance the effectiveness of the states' agricultural preservation program. The more successful TDR programs have used "agricultural protective zoning" as part of their land preservation strategies. The state should push for more protective zoning within the rural areas of each county. According to our state constitution, state government is empowered with the ability to implement agricultural zoning. Exercise of that power is an option to be considered during the development of either county or state administered TDR programs. In examining the successful farmland preservation efforts of our neighbors, it is apparent that "agricultural protective zoning" schemes are a crucial part of their preservation programs.

### **Use of a TDR Bank**

The use of a TDR Bank to implement a TDR program is not widespread. In fact, only a few jurisdictions have used such a strategy. It would be prudent to contact the administrators of these programs and further examine the benefits and shortcomings of such an approach to TDR program development and implementation. As a practical matter, TDR programs are complex and require much time and effort. The use of experienced staff could reduce start-up and ongoing administrative time and expense. The Delaware Agricultural Lands Preservation Foundation's trustees and staff are very familiar with both farm operation and agricultural preservation specific issues. DDA believes using this group to administer a TDR program would have multiple benefits.



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The group is experienced, partisanly balanced, not for profit, and utilizes a successful preservation strategy. This group is willing to act as a TDR bank with the understanding that a TDR program cannot replace the current PDR program, but can enhance the program. In addition, the Foundation's current preservation strategy, as depicted on the "Strategy Map," must form the strategic base of a TDR preservation effort. It must be stated, key to the successful implementation of TDR program(s) in Delaware is full and dedicated funding for the PDR program. Failing to unify these programs in purpose and direction will result in further fragmentation of our agricultural resources, and the inefficient expenditure of public funds.

The following outlines DDA proposed features of a possible TDR Bank program:

1. TDR program of agricultural preservation administered through the Agricultural Lands Preservation Foundation
2. Each county would identify sending and receiving areas
  - 2a. Alternative: County would identify receiving areas and Foundation would use all applications for permanent preservation as the "sending" parcels. In essence the entire county would be a sending area and any farm that wanted to apply for permanent preservation would do so through the regular channels.
3. Foundation would set the value/cost of an acre of development rights for transfer based on the most recent experience in purchasing easements in the designated sending area. Price could be set once a month.
4. Developers who needed transfer rights would come to the Foundation and pay for the numbers of acres required plus an administration fee. County systems would be structured to accept these rights.
5. The funds from the transfer rights would be segregated into a funding pool that would be applied separately to those farms in the Aglands program, that had applied to sell development rights, and that were in the designated sending areas. Funds would stay within the County.
6. Once the transfer funds for any year were expended then remaining farms in target areas would compete in the regular "pool" of funds under the current appropriation for PDR and under the rules in effect.
7. The counties would administer all aspects of the receiving areas program.